

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

PLASTIC SURGERY ASSOCIATES OF NEW
YORK, *d/b/a* ALOYSIUS G. SMITH, M.D.,
P.C.; and ALOYSIUS G. SMITH, M.D.,

Defendants.

17 Civ. 204 (KMK)

[PROPOSED]
PERMANENT INJUNCTION
ON CONSENT

WHEREAS, on January 11, 2017, plaintiff the United States of America (the “Government”) initiated the above-captioned case, alleging that, since at least January 2011, defendants Aloysius G. Smith, M.D., P.C., *d/b/a* Plastic Surgery Associates of New York, (“PSANY”), and Aloysius G. Smith, M.D. (“Smith”), the owner and medical director of PSANY (collectively, the “defendants”), have failed to withhold or pay federal employment taxes owed to the Internal Revenue Service (“IRS”) in relation to wages paid to employees of PSANY;

WHEREAS, the Government seeks a permanent injunction against defendants PSANY and Smith (the “Injunction Claim”);

WHEREAS, defendants expressed an interest in resolving the Government’s Injunction Claim on consent and without the need for litigation;

WHEREAS, it is hereby stipulated and agreed by the Government and defendants that this permanent injunction (the “Consent Injunction”) shall be entered to resolve the Injunction Claim set forth in the Government’s complaint and that entry of the injunction is appropriate for the enforcement of the internal revenue laws.

ACCORDINGLY, IT IS STIPULATED, ORDERED, AND ADJUDGED that:

1. This Court has jurisdiction over this matter pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345. Further, venue is proper in the Southern District of New York

pursuant to 28 U.S.C. §§ 1391(b) and 1396.

2. From April 2011 until at least the filing of this action, defendants failed to timely file IRS Forms 940 and 941. Further, starting in January 2011, defendants failed to deposit or to pay to the U.S. Treasury the federal taxes PSANY owed in relation to wages it paid to its employees. Specifically, since 2012, defendants failed to deposit or pay any of the employment taxes PSANY reported or should have reported in IRS Forms 940 and 941.

3. Defendants admit and acknowledge that: (i) from January 2011 until at least the filing of this action, they failed to timely file IRS Forms 940 and 941 to report the amounts of federal employment taxes owed by PSANY; and (ii) from January 2011 until at least the filing of this action, they failed to pay to the IRS the federal employment taxes owed by PSANY.

4. In light of defendants' persistent practice of not complying with their federal employment tax obligations, injunctive relief under 26 U.S.C. § 7402(a) and the Court's inherent equity powers is appropriate. Such relief would further the public interest and is appropriate to prevent Defendants continued violations of the internal revenue laws, which have caused and will continue to cause the Government to suffer irreparable harm, including but not limited to the loss of tax revenue, which outweighs any harm suffered by defendants.

5. Defendants shall deposit withheld Federal Insurance Contribution Act ("FICA") taxes, as well as PSANY's share of FICA taxes, in an appropriate federal depository bank in accordance with the federal deposit regulations.

6. Defendants shall deposit Federal Unemployment Tax Act ("FUTA") taxes in an appropriate federal depository bank each quarter in accordance with the federal deposit regulations.

7. Defendants shall deposit withholdings from employees' wages that are required by federal income tax law in an appropriate federal depository bank each quarter in accordance

with the federal deposit regulations.

8. Defendants and their agents, servants, employees, and assigns, and anyone in active concert or participation with them, are prohibited from failing to withhold and pay over to the IRS all employment taxes, including federal income and FICA taxes, required by law.

9. No later than the 6th day of each month, defendant Smith shall sign and send, by first-class mail, affidavits to IRS Revenue Officer Kevin Dyal, at the IRS's offices at 210 East Post Road, White Plains, NY 10601, or such other person as the IRS may designate, affirming that the requisite withheld income, FICA and FUTA tax deposits for PSANY for the prior month have been timely made. This shall continue for as long as the PSANY remains in business or until further Order of the Court.

10. From the entry of this Consent Injunction, defendants shall timely file all employment and unemployment tax returns with the IRS, including but not limited to, IRS Forms 941 and 940, and shall deliver copies of the same, within 14 days of filing, to IRS Revenue Officer Dyal at the address above, or to such other person as the IRS may designate,.

11. PSANY shall timely pay any and all outstanding liabilities due on each such tax return for each tax period subsequent to the entry of this Consent Injunction, including, but not limited to, all required outstanding liabilities due on each Form 940 or Form 941 tax return required to be filed.

12. PSANY shall refrain from making any disbursements or assigning any property after the date of entry of this Consent Injunction until all employment taxes that PSANY is required to pay and incurred after entry of this Consent Injunction have, in fact, been timely paid to the IRS.

13. Defendants are enjoined from assigning and/or transferring money or property to any other person or entity so as to have that person or entity pay the salaries or wages of

PSANY's employees.

14. In the event that defendant Smith comes to own, manage or work at any new business entity in the next five years, he must notify IRS Revenue Officer Kevin Dyal at the address above, or such other person as the IRS may designate, within 30 days of the start of his association with the new business entity.

15. Defendants shall deliver a copy of this Consent Injunction to all current employees of PSANY, and any former employees employed at any time since January 1, 2011.

16. Defendants shall post, and keep posted for five years, a copy of this Consent Injunction at PSANY in an area that is readily accessible to the employees of PSANY.

17. If either defendant Smith or defendant PSANY violates any term of this Consent Injunction, the counsel for the Government shall send Defendants a written notice of the violation, and Defendants shall have 10 days to cure the violation after notification is sent. Specifically:

- a. a "cure" for the violation includes making a late tax deposit and all accruals on such tax; paying delinquent tax shown on a return and all accruals on such tax; filing a delinquent tax return; and providing a delinquent notification to the designated IRS revenue officer;
- b. if counsel for the Government has sent Defendants three separate written notifications for three separate violations, then counsel for the Government shall no longer be obligated to send written notification of a violation; and
- c. if any violation is not cured within ten days of notification or if, after the third notification followed by cures, the Government becomes aware of a new violation by defendant Smith or defendant PSANY, then the Government shall be entitled to file with this Court a motion for an Order to Show Cause why defendant Smith or PSANY should not be held in contempt of this injunction and why PSANY should not be ordered to cease doing business immediately and why defendant Smith should not be permanently enjoined from forming,

incorporating, or owning another or a successor business entity and from working for any business in any capacity that includes any responsibility for withholding, accounting for, or paying over employment taxes or for filing employment tax returns.

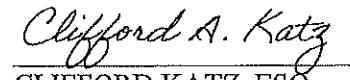
18. This Court retains jurisdiction over this case to ensure compliance with this Consent Injunction.

19. Each party shall bear its own fees and costs in connection with this action.

GEOFFREY S. BERMAN
United States Attorney

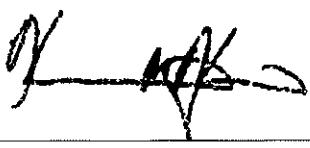

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IT IS SO ORDERED:

Date: December 20, 2019


HON. KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE